

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *[Signature]* D.C.

05 JUL -5 PM 3:19

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

ARTICE JEAN RUFFIN,  
Plaintiff

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security

Defendant

)  
)  
)  
) Civil Action No. 05-2173-MI P  
)  
)  
)  
)  
)

ORDER OF REMAND

Pursuant to the power of this court to enter a judgment affirming, modifying, or reversing the Commissioner's decision with remand in Social Security actions under sentence four of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), and in light of the Commissioner's motion to remand this action, this case is hereby remanded pursuant to sentence four of 42 U.S.C. § 405(g). Upon remand, the administrative law judge ("ALJ") will develop the record further with respect to how long Plaintiff's first husband had been absent before she married her second husband, and whether, under Tennessee state law, his absence dissolved Plaintiff's first marriage prior to her marrying her second husband, the deceased wage earner. In conducting his analysis, the ALJ is ordered to provide specific reasons for not accepting Plaintiff's testimony that she and her first husband had not been together since 1959. The reasons cited by the ALJ shall be supported by credible evidence on the record as a whole. Plaintiff's testimony conflicts with the ALJ's finding regarding the date she separated from her first husband. Several times during Plaintiff's testimony, she stated that in 1959, the same year she got married, she left Mississippi, where her first husband lived and moved to Tennessee. Also, Plaintiff stated that it was not true that her first marriage ended by separation on August 3, 1969. In fact, when

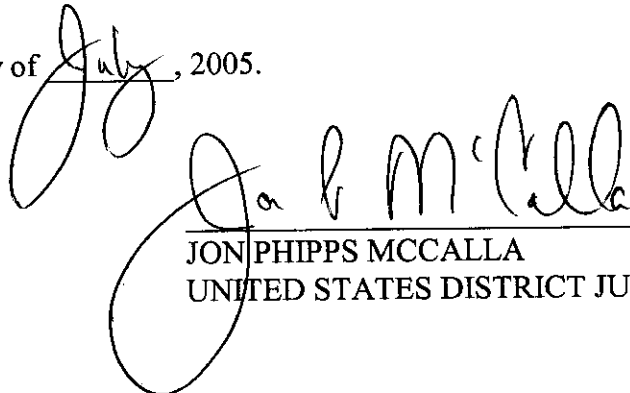
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Plaintiff was asked if she and her first husband had a relationship after she left him in Mississippi in 1959, she testified that she never saw him and that she never tried to find out anything about him (Tr. 78, 85). Other than the one unsubstantiated statement contained in the Reconsideration Determination, the record does not contain any other information which suggests that Plaintiff did not separate from her first husband until 1969.

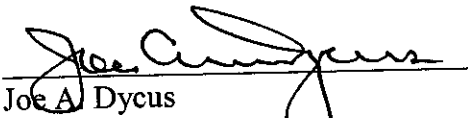
**WHEREFORE**, because the ALJ did not discount Plaintiff's testimony and because the source of the information in the Reconsideration Determination is unsubstantiated, **IT IS ORDERED** that the ALJ develop the record further with respect to how long Plaintiff's first husband had been absent before she married her second husband. **IT IS FURTHER ORDERED** that the ALJ provide specific reasons, which are substantiated by the record, for his finding regarding the date that Plaintiff separated from her first husband.


Based on the foregoing, this Court hereby enters a judgment reversing the decision of the ALJ and remanding this case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). See Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157 (1991); Shalala v. Schaefer, 509 U.S. 292, 113 S.Ct. 2625 (1993). Upon remand, the Commissioner shall take action consistent with this order.

SO ORDERED this 1 day of July, 2005.

  
JON PHIPPS MCCALLA  
UNITED STATES DISTRICT JUDGE

Consented to and Approved By:

  
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*By Consent*

U.S. DISTRICT COURT  
MEMPHIS, TENNESSEE

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Honorable Jon McCalla  
US DISTRICT COURT